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Mailed : *6-13-07*

In re Application of
P.C. Blank et al.
Serial No. 10/804,953
Filed: March 19, 2004
For: COLUMNAR ADHESIVE LABEL ROLL

: DECISION
: GRANTING
: PETITION

This is a decision on the March 19, 2007 "PETITION UNDER 37 CFR 41.3."

Applicant filed an appeal brief on January 22, 2007, which was held non-compliant under 37 CFR 41.37 by the examiner in a "Notification of Non-Compliant Appeal Brief" mailed February 23, 2007.

The instant petition was then timely filed on March 19, 2007 and is before the Director of Technology Center 1700 for consideration. The petition requests that the various objections raised by the Notification of February 23, 2007 be withdrawn.

The petition is **GRANTED** for the reasons below.

DECISION

The examiner held the brief non-compliant because it included the heading "Background," because the brief summary included additional paragraphs not directed towards the claimed subject matter, because the arguments section did not include subheadings for dependent claims, and because the arguments section included an additional subheading not directed to a claim or ground of rejection.

None of the above are proper grounds for objecting to an appeal brief under 37 CFR 41.37. The ten items required by 37 CFR 41.37 are necessary, but nothing in 37 CFR 41.37 prohibits additional items from being included. Likewise the brief summary section must contain a summary of the claimed subject matter of each independent claim on appeal, with reference to the corresponding portions of the specification, but may contain additional material as well. The use of subheadings is optional, and nothing in the rules prohibits additional subheadings. Thus none of the examiner's objections are well-founded and they are hereby withdrawn.

With respect to applicant's other concerns, a careful review of USPTO records has been conducted. There is no evidence that an appeal conference with the noted appeal conferee was ever held.

As the appeal brief filed January 22, 2007 was compliant with 37 CFR 41.37, applicant's petition is hereby **GRANTED**. The examiner shall consider the appeal brief of January 22, 2007 and take appropriate action in response thereto. The revised brief of March 19, 2007 shall not be entered.

JM Stone

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